IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6591 of 1989

with

SPECIAL CIVIL APPLICATION No 6592 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL KIRITKUMAR HARMANBHAI

Versus

SUPERINTENDENT,

Appearance:

Ms. Mahrook Kerrawala for MR BP TANNA for Petitioner No. 1

MR KM PATEL for Respondent No. 1

Mr. LB Dabhi, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/10/2004

ORAL JUDGEMENT

Heard learned advocate Ms. Kerrawala for Mr. Tanna, learned Sr. Advocate for the petitioners, Mr. K.M.Patel, learned advocate for respondent No.1 and Mr. Dabhi, learned AGP for respondent no.2 in these petitions. In these petitions, the petitioners have challenged the order of termination of their service dated 25.8.1989. Petitioner Patel Kiritkumar H. was working as a Junior Clerk whereas the petitioner Subhash Vanand was working as a Hamal in the establishment of respondent No. 1 since 1985. Their services were terminated by respondent no.1 on the ground of abolition of the post of clerk and Hamal due to reduction in strength of students. This Court has, while issuing rule, passed the following common order on 22nd September, 1992 :

"Rule. Ad.interim relief to continue as interim relief. In the mean time, petitioners are directed to make representations before the State of Gujarat in connection with the disputes raised in these petitions. Representations to be filed within two weeks from today. Representations, when filed, shall be considered by the appropriate authority on merits after hearing all concerned and shall be decided within three months thereafter. Result of the decision on the said representations will be communicated to this Court thereafter by the concerned parties."

Earlier, on 13.9.89, ad.interim stay of implementation of the impugned order was granted which was extended from time to time and was confirmed by aforesaid order dated 22.9.1992 while issuing Rule in the matters and in the mean time, petitioners were directed to make representations before the State of Gujarat in connection with the disputes raised in these petitions; such representations were required to be filed within two weeks from the said day and were required to be considered by the appropriate authority on merits after hearing all concerned and shall be decided within three months thereafter. Result of the decision on the said representations was required to be communicated to this Court thereafter by the concerned parties.

Today, when these matters were taken up for hearing, learned advocate Ms. Kerrawala submits that the petitioners had made representation dated 3rd October, 1992 as per the directions issued by this Court. She has, however, raised grievance that the representations

made by the petitioners pursuant to this Court's direction have remained without any decision from the State of Gujarat. She submits that one letter was received from the State of Gujarat wherein it was mentioned that the petitioners are required to contact respondent no.1 but no decision was taken by the State of Gujarat upon the representation made by the petitioners. Ms. Kerrawala submits that Shri PATEL KIRITKUMAR HARMANBHAI, petitioner in SCA No. 6591 of 1989 has left India since more than five years and he has no interest in the present petition. As regards the petitioner in SCA No. 6592 of 1989 namely Valand SUbhashbhai Motibhai who is working as Hamal, she submits that he is interested in job. She submits that one peon working with respondent No.1 namely Chandubhai S. Valand has expired on 20th January, 2001. According to her submission, one post of peon has, therefore, fallen vacant and the said petitioner Subhashbhai S. Valand can be accommodated on the said post but the difficulty is that necessary sanction from the Government would be required. Learned advocate Mr. Patel submits that both the petitioners had continued in service on the basis of the interim orders of this Court and if Patel Kiritkumar who has left India is not pressing the petition, then, respondent No.1 can accommodate the petitioner Subhash Valand on the post of peon because he is eligible for the post of peon but it would require sanction from the State Government because if the sanction is not granted by the State Government, then, respondent No.1 will have to shoulder the burden of salary and other benefit of the petitioner Subhash Valand. Learned advocate Mr. K.M. Patel has also submitted about the apprehension of respondent no. 1 that because of the interim orders were passed by this Court, the petitioners had continued in service and, therefore, in future, the State Government may take decision to recover the grant which was already released in favour of the respondent no.1 in respect of Kiritkumar Patel and Subhash Valand and, therefore, some suitable directions may be issued to respondent No.2 so that they may not issue order for recovery of such grant from the respondent NO.1 which has already been released in favour of the first respondent for the salary and other benefits of the present petitioners.

Learned AGP Mr. Dabhi appearing for respondent NO.2 submits that the representation which has remained undecided will be examined by the Government and appropriate orders thereon will be passed as per the directions issued by this Court on 22nd September, 1992. He, however, submits that the respondent no.1 may be

directed to approach respondent no.2 with a proposal to accommodate petitioner Subhash Valand on the post of peon in place of Chandubhai S. Valand who has expired in January, 2001.

Considering all these facts and circumstances of the case as well as the back ground, when the post of peon has fallen vacant since 20th January, 2001 and Subhash Valand who is presently working as Hamal is eligible for the said post and respondent No.1 is also offering for accommodating the petitioner Subhash Valand as a peon which has fallen vacant since January, 2001, it is directed to Respondent No.1 to approach respondent no.2 with a proposal to accommodate petitioner Subhash Valand on the post of peon in place of Chandubhai S. Valand who has expired in January, 2001.

Respondent No.2 Director of Technical Education, Technical Education Board, Gujarat State, Gandhinagar to consider the case of the petitioner in SCA No. 6592 of 1989 namely Valand Subhashbhai Motibhai for the post of peon in respondent NO. 1 institution with sympathetical approach after giving opportunity of hearing to the respective parties including the institution and the petitioner then to pass appropriate orders based on sympathetic consideration while keeping in view that the said person has worked with the respondent No.1 institution since 1985 and only because of the reduction in the strength of students, order of termination was passed by the institution. Respondent No.2 is required to pass these orders within three months from the date of receipt of copy of these orders. Respondent NO.2 is also directed to communicate his orders to respondent No.1 and the petitioner Valand Subhashbhai Motibhai and not to implement the same for a period of one month from the date of communication thereof to respondent No.1 and petitioner if such order is adverse to respondent No.1 and/or petitioner. Respondent NO.2 is also directed not to recover any grant which has already been released in favour of the first respondent for the salary and other benefits of both the petitioners.

It is clarified that this Court has not passed any orders in respect of the petitioner in SCA No. 6591 of 1989 since he has left India and has gone abroad since many years and, therefore, it will be open for respondent No.1 to take appropriate action against the petitioner in SCA No. 6591/1989. Respondent No.1 has issued notice of termination of service of both the petitioner which is dated 25.8.1989 and which was to come into effect from 24th September, 1989 and prior to that, this court

granted ad.interim relief in favour of both the petitioners on 13.9.1989 and same had remained in operation till this date and on that basis, both the petitioners had remained continue in service with respondent No. 1. Therefore, whatever grant released by respondent no.2 in favour of respondent No.1 for the salary and other benefits of petitioners will not be recovered by respondent No.2.

With these observations and directions, these petitions are disposed of. Rule is made absolute in terms indicated hereinabove.

(H.K. Rathod,J.)

Vyas